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10/643,881

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Robert James Vimini

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RATNERPRESTIA

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EXAMINER

THAKUR, VIREN A

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 11/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/643,881

**Applicant(s)**

VIMINI ET AL.

**Examiner**

Viren Thakur

**Art Unit**

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 13-15, 18-28, 32-41, 44-65 and 67-69 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13-15, 18-28, 32-41, 44-65 and 67-69 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 5/2/2006.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Arguments***

1. In light of the amendment to claim 13, the rejection of claims 13-19, 21-28, 32-33, 35-36, 39-45, 47-63 and 65-67 under 35 U.S.C. 102(e) has been withdrawn.  
  
However, please refer to new grounds of rejection below, as a result of the amendment.
2. Applicant argues that although Berrier et al. mention various alternatives to the number of layers that a bag can have, Berrier does not show the embodiment where the bag is only a single layer. The Examiner disagrees since although the embodiment is not shown, Berrier et al. disclose that the bag can be made of a single layer. Nevertheless, this argument is moot in view of the new grounds of rejection.

### ***Specification***

3. The use of the trademark "Polynil 66 P-240 HS" has been noted on page 6 of the specification. It should be capitalized wherever it appears and be accompanied by the generic terminology. Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and

every effort made to prevent their use in any manner, which might adversely affect their validity as trademarks.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:
1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 13-15, 18,19, 21-28, 32-33, 35-38, 68 and 69 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berrier et al. (US 20040121054). With regard to claim 13 and 33, Berrier et al. disclose a meat product inside the internal space of a package (Paragraph 0008, Lines 5-6). The package comprises an inside film layer which could be one layer or more (Paragraph

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0017, Lines 1-2). The film layer comprises one or more polymer comprising polyamides such as nylon 66 (Paragraph 0008, Lines 9-11 and Paragraph 0036, Lines 1-7). Berrier et al. also discloses that a packaged food maybe designed to be placed directly in a microwave oven or convention oven to heat or cook the food without first removing the package (Paragraph 0002, Lines 1-7). It is inherent that the package will have directions to cook the food depending on the design of the package. Berrier et al. also discloses a package that is ovenable that can withstand exposure to temperatures up to 400°F, (Paragraph 0003, Lines 7-10) which is within the applicant's claimed range. Berrier et al. discloses a package comprising a bag, which consists of a film (Paragraph 0083, Lines 1-4) and may have a heat-shrinkable attribute (Paragraph 0077, Line 1). Berrier et al. discloses a bag/pouch with a seal that remains sealed when the food product is cooked (See Figure 5).

Berrier et al. do not disclose wherein a ratio of the size of the bag to the weight of the meat product is from 17 to 23 and a gap. However, in one embodiment Berrier et al. discloses the dimensions of the bag used to heat or cook the meat product (12" x 18") (Paragraph 0018). Berrier et al. further discloses placing a half pound meat product into said pouch, and placing a three pound meat product into a pouch. Although the ratio of the size of the bag to the weight of the meat product is not within the ratio of 17 to 23, it is well recognized in the art to place meat of a certain size into packaging having a specific size. Regardless of the size of the package, the ratio of 17 to 23 is wholly dependent

on the size and type of meat disposed within the packaging. Therefore, it would have been obvious to a person having ordinary skill in the art to place more meat into the bag of Berrier et al. for the purpose of storing and heating more meat at one instance. For the reasons discussed above, to provide a specific ratio for the size of the bag to the weight of the meat product within the bag would not provide a patentable distinction from the prior art. With regard to the gap between the bag and the meat during cooking, it is well known to one having ordinary skill in the art that upon heating a product that contains moisture, such as meat, the moisture that evaporates will create pressure within the heating bag. Berrier et al. disclose microwave oven cooking as well as boiling the bag containing a meat product (Paragraph 0096) and thus provide the elements necessary for expansion of the bag to form a gap with the meat product. If the pressure is not relieved the container, will attempt to expand and thus will form a gap. Berrier et al. further teach that the bag is not perforated (Paragraph 0096) and therefore upon heating it would have been obvious to one having ordinary skill in the art that the bag will expand to form a gap. Nevertheless, the size of the gap is variable depending on the amount of and type of meat contained within the container as well as the method used to cook the meat and thus would not provide a patentable feature with respect to the prior art, since it is obvious to one having ordinary skill in the art at the time the invention was made that the amount of meat within the bag is a choice of the packager or consumer. For example, to save packaging the consumer could put in twice the amount of

meat within the bag; which could raise or lower the size of the gap depending on the cooking method.

With regard to claim 14, Berrier et al. discloses a package consisting of the film (Paragraph 0083, Lines 3-4), which consists of about 100% of one or more polyamides (Paragraph 0018, Lines 7-8). Berrier et al. further teach using polyamides such as nylon 66 (Paragraph 0036) and further teach using at least 98% of the selected polyamide. Thus, it would have been obvious to one of ordinary skill in the art to expect that the sole polyamide could be nylon 66, because it is disclosed as a suitable polyamide (Paragraph 0036; Paragraph 0041). Since, Berrier et al. suggests that the single layer bag can comprise one polyamide, which is nylon 66, and wherein said polyamide can be greater than 98% of the film layer, it would have been obvious that the polyamide could be the sole layer of the film.

With regard to claim 15, Berrier et al. discloses either or both layers of the polyamides may comprise effective amounts of one or more heat stabilizers (Paragraph 0070, Lines 1-3). It is inherent that the package could consist essentially of nylon 66. Berrier et al. discloses either or both layers of the polyamide may comprise effective amounts of one or more heat stabilizers (Paragraph 0070, Lines 1-3). It is inherent that the layer could be a single layer.

With regard to claim 19, Berrier et al. discloses a film comprising one layer (Paragraph 0017, Lines 1-2), which consists essentially of one or more polyamides (Paragraph 0018, Lines 7-9). Berrier et al. also discloses either or

both layers of the polyamide may comprise effective amounts of one or more heat stabilizer (Paragraph 0070, Lines 1-3). It is inherent that the polyamide could be nylon 66 and the layer could be a single layer. With regard to claims 21-23, Berrier et al. discloses red meat products, poultry and turkey as meat products (Paragraph 0092, Lines 1-4).

With regard to claims 24-25, it is inherent that the turkey or poultry can be provided with or without the skin depending on the taste of the customer, and the meat product could be marinated in advance, especially since the product is consumed after cooking in the package. It would be necessary to add savory ingredients to enhance the flavor of the meat product, otherwise consumers will not purchase due to bad taste.

With regard to claim 26, Berrier et al. discloses a film that is heat sealed (Paragraph 0084, Line 1).

With regard to claims 27-28, Berrier et al. discloses an unperforated package consisting essentially of a film such that the film is the only packaging structure directly adjacent the internal space of the unperforated package (Paragraph 0083, Lines 3-4) having a thickness of 1 mil (Paragraph 0080, Lines 1-2).

With regard to claim 32, Berrier et al. discloses a package comprising a film having a thickness of at least about 1 mil, 1.5 mil, 2 mil, etc (Paragraph 0080).



With regard to claim 35, Berrier et al. discloses a package suitable for packaging a food product, it is inherent that the package has a second end; otherwise it would not be a bag. In addition, Berrier et al. disclose that the bag or pouch may be closed using metal or plastic clips (Paragraph 0084).

With regard to claim 36, Berrier et al. disclose that the film may be oriented in either the longitudinal or transverse direction or in both directions (i.e. biaxial) (Paragraph 0082). It is inherent that the longitudinal or transverse direction is monoaxial.

With regard to claim 37, Berrier et al. disclose that the bag *may* have a heat shrinkable attribute (Paragraph 0077). Therefore, Berrier et al. suggest to one having ordinary skill in the art at the time the invention was made that it would have been obvious to optionally include a bag free of heat shrink material, if so desired.

With regard to claim 38, Berrier et al. disclose that the bag is heat sealed (Paragraph 0084). Berrier et al. discloses a meat product inside the internal space of a package (Paragraph 0081, Lines 5-6). The package comprises an inside film layer which could be one layer or more (Paragraph 0017, Line 1-2). The film layer comprises one or more polymers comprising polyamides such as nylon 66 (Paragraph 0008, Lines 9-11; Paragraph 0036, Lines 1-7). In addition, the package is ovenable and can withstand exposure to temperatures up to 400°F, (Paragraph 0003; Paragraph 0096) which is within the applicant's claimed range. The bag is not perforated and heat-sealed such that the package does

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not have an opening such as a failed heat seal region (Paragraph 0084 and Paragraph 0087).

7. Claim 20 and 64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berrier et al. (US 20040121054), as applied to claims 13-15, 18,19, 21-28, 32-33, 35-38, 68 and 69 in view of Hoffman (US 3454211). Berrier et al. failed to disclose a bag having chamfered corners. However, Hoffman teaches a pouch for frozen foods having the bottom ends curved (See Figure 3). Hoffman also teaches that the corner could be disposed at a 45° angle or some other appropriate angle to obtain the desired result (Column 2, Line 70-73; Column 3, Lines 1-3). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Berrier et al. with Hoffman because the curved ends will help to reduce the stress concentration at the corners to prevent the bag from bursting.

With regard to claim 64, Berrier et al. disclose a product comprising a poultry product (Paragraph 0092) and a bag, as discussed above. The bag comprising one layer (Paragraph 0017, Lines 1-2) comprised of one or more polyamides in a range of at least about 90% (Paragraph 0018, Lines 1-6). The bag could consist essentially of nylon 66 because it is disclosed as a suitable polyamide (Paragraph 0008, Lines 9-11) and is ovenable and can withstand exposure to temperatures up to 400°F (Paragraph 0003, Lines 7-10). Berrier et al. disclose a gap, as discussed above. Nevertheless the size of the gap is

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wholly dependent on several factors such as the amount of moisture in the meat, the type of meat, the amount of meat in the bag, the means for cooking the meat and the duration of cooking. For the reasons discussed above, in paragraph 6, the size of the gap depends on several factors that are the choice of the consumer and thus does not provide a patentable distinction from the prior art. With regard to the ratio of the size of the package to the amount of meat in the package, please refer to the discussion above, in paragraph 6.

8. Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Berrier et al. (US 20040121054), as applied to claims 13-15, 18, 19, 21-28, 32-33, 35-38, 68 and 69, above, and in further view of Barr et al. (US 6422454). Berrier et al. disclose as applied above. Berrier et al. do not disclose wherein the bag provides directions to cook the meat product. Barr et al. teach providing instructions for providing assistance in how to prepare the food product. The package bears directions for the consumer (Column 4, Lines 64-67). Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Berrier et al. with the teaching of Barr et al. by incorporating directions for how to prepare the food product in order to improve the ease of preparation for the consumer.
9. Claims 39-41, 44-63, 65 and 67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berrier et al. (US 20040121054) in view of Barr et al. (US

6422454). Berrier et al. disclose as applied above. Berrier et al. do not disclose using an outer container. However, it is well recognized in the art to utilize outer containers to package food products as evidenced by Barr et al. Barr et al. teach a package containing individually packaged pouches or other containers of food items (Column 4, Lines 15-22). Barr et al. thus provide further evidence that it is well recognized in the art to individually package food products and then dispose the plurality of food products within a single outer container. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Berrier et al. as taught by Barr et al. for the purpose of incorporating an outer container to hold the meat product in order to provide a protective packaging and improve the transportability of a plurality of meat products. With regard to the ratio of the size of the package to the amount of meat in the package, please refer to the discussion above, in paragraph 6.

With regard to claim 41 and 45, Berrier et al. disclose the package comprising one layer (Paragraph 0016 and Paragraph 0017, Lines 1-2). The layer may comprise effective amounts of one or more heat stabilizers (Paragraph 0070, Lines 1-3). It would have been obvious to one having ordinary skill in the art to expect that the one layer is a single layer as instantly claimed.

With regard to claim 40 and 44, Berrier et al. discloses a film comprising one layer (Paragraph 16 and Paragraph 0017, Lines 1-2) comprising one or more polyamides in a range of at least about 98% (Paragraph 0018, Lines 1-6). Therefore, Berrier et al. suggests that the single layer bag can comprise one

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polyamide, which is nylon 66, and wherein said polyamide can be greater than 98% of the film layer. Thus, it would have been obvious to one of ordinary skill in the art to expect that the sole polyamide could be nylon 66 because it is disclosed as a suitable polyamide (Paragraph 0036; Paragraph 0041).

With regard to claim 45, Berrier et al. discloses a film comprising one layer (Paragraph 0017, Lines 1-2), which consists essentially of one or more polyamides (Paragraph 0018, Lines 7-9). Thus, it would have been obvious to one having ordinary skill in the art to expect that the polyamide could be nylon 66 because it is disclosed as a suitable polyamide and the layer would be a single layer.

With regard to claims 47-49, Berrier et al. disclose red meat products, poultry and turkey as meat products (Paragraph 0092, Lines 1-4).

With regard to claims 50-51, Berrier et al. failed to disclose a marinated meat product or meat product with skin. It would have been obvious to one having ordinary skill in the art to expect that the turkey or poultry is with or without skin depending on the taste of the customer, and the meat product could be marinated in advance especially since the product is consumed after cooking in the package. It would be necessary to add savory ingredients to enhance the flavor of the meat product, otherwise consumers would not purchase the product due to bad taste.

With regard to claim 52, Berrier et al. disclose heat sealing film (Paragraph 0083).

With regard to claim 53, Berrier et al. disclose an unperforated package consisting essentially of a film such that the film is the only packaging structure directly adjacent the internal space of the unperforated package (Paragraph 0083, Lines 6-9). It would have been obvious to one having ordinary skill in the art to expect that the product is free from other packaging because the film is the only packaging structure enclosing the product.

With regard to claim 54-55, Berrier et al. disclose that the unperforated package may comprise a bag comprising a film (Paragraph 0083, Lines 3-4) having a thickness of at least 1 mil, 1.5 mil, 2 mil, etc (Paragraph 0080).

With regard to claim 56, Berrier et al. disclose a bag containing a meat product comprising identical films as discussed above. Berrier et al. do not disclose wherein the gap between the meat and the bag is between about one to three inches. However, the size of the gap is wholly dependent on several factors such as the amount of moisture in the meat, the type of meat, the amount of meat in the bag, the means for cooking the meat and the duration of cooking. For the reasons discussed above, in paragraph 6, the size of the gap depends on several factors that are the choice of the consumer and thus does not provide a patentable distinction from the prior art.

With regard to claim 57, Berrier et al. disclose that the package is ovenable and can withstand exposure to temperatures up to 400C (Paragraph 0031, Lines 7-10), but failed to disclose a bag with directions to cook the meat product. Barr et al. teach providing instructions for providing assistance in how to

prepare the food product. The package bears directions for the consumer (Column 4, Lines 64-67). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Berrier et al. with the teaching of Barr et al. by incorporating directions for how to prepare the food product in order to improve the ease of preparation for the consumer.

With regard to claim 58, Berrier et al. disclose a package suitable for packaging a food product. It would have been obvious to one having ordinary skill in the art to expect that the package has a second end; otherwise it would not be a bag or package. In addition, Berrier et al. disclose that the bag or pouch may be closed using metal or plastic clip (Paragraph 0084).

With regard to claim 59, Berrier et al. disclose that the film may be oriented in either the longitudinal or transverse direction or in both directions (i.e. biaxial) (Paragraph 0082). It would have been obvious to one having ordinary skill in the art to expect that the longitudinal or transverse direction is mono axial.

With regard to claim 37, Berrier et al. disclose that the bag may have a heat shrinkable attribute (Paragraph 0077). It would have been obvious to expect that this attribute is option and therefore the bag may be free of heat shrink material.

With regard to claims 62-63, Berrier et al. failed to disclose an outer container comprising a box. However, Barr et al. teach a package that is a box (Figure 13) containing individually package pouches or other containers of food items (See Figure 1, Column 4, Lines 15-22). Therefore, to modify Berrier et al.

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as taught by Barr et al. to use a box to package a plurality of individually packaged food items would have been obvious to a person having ordinary skill in the art, since such packaging would provide easy storage and transportation for the plurality of food items.

10. Claim 46 is rejected under 35 U.S.C. 103(a) as being unpatentable over Berrier et al. (US 20040121054) in view of Barr et al. (US 6422454), as applied to claims 39-41, 44-63, 65 and 67, above, and in further view of (Hoffman (US 3454211).

With regard to claim 46, Berrier et al. failed to disclose a first end having chamfered corners. Hoffman teaches a pouch with curved corners in order to prevent the corners from being accessible to the food product (Column 1, Lines 41-50). It would have been obvious to one having ordinary skill in the art to modify Berrier et al. with the teachings of Hoffman and utilize a chamfered edge as instantly claimed because it is seen as a matter of design choice since the bag taught by Hoffman performs the function of keeping the products together and away from the corners which would be similar to the function of keeping the meat product intact.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Viren Thakur whose telephone number is



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(571)-272-6694. The examiner can normally be reached on Monday through Friday from 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571)272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Viren Thakur  
Examiner  
Art Unit: 1761



**KEITH HENDRICKS**  
**PRIMARY EXAMINER**